

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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DWAYNE DYE,

Plaintiff,

v.

Case No. 2:11-cv-13967

WASHTENAW COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

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**ORDER DENYING WITHOUT PREJUDICE DEFENDANTS' MOTION TO DISMISS**

Plaintiff filed his complaint in this action on September 12, 2011. On October 3, 2011, Defendants, instead of filing an answer, filed a motion to dismiss this action under Federal Rule of Civil Procedure 12(b)(6). Plaintiff responded on October 14, 2011, and filed an amended complaint. Under Federal Rule of Civil Procedure 15, a party may amend its complaint once as a matter of course within 21 days after service of a motion filed under Rule 12(b) in lieu of a responsive pleading. See Fed. R. Civ. P. 15(a)(1)(B). Plaintiff filed his amended complaint within the 21-day window, so it is now his operative pleading. Therefore, because Defendants' motion to dismiss addresses the original complaint, it must be denied without prejudice. Accordingly,

IT IS ORDERED that Defendants' motion to dismiss [Dkt. # 7] is DENIED WITHOUT PREJUDICE. In accordance with Rule 12(a)(1), Defendants have 21 days

after service of Plaintiff's amended complaint to file an answer or a renewed motion to dismiss under Rule 12(b).<sup>1</sup>

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: October 19, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 19, 2011, by electronic and/or ordinary mail.

s/Lisa G. Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522

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<sup>1</sup>On October 14, 2011, Defendants filed a "Reply to Response to Motion to Dismiss in Lieu of Responsive Pleadings and to Renew Motion to Dismiss to Apply to Amended Complaint." In that filing, Defendants requested that "their Motion to Dismiss be renewed and applied to the Amended Complaint as well, because the legal arguments therein apply equally to the Plaintiff's Amended Complaint and it would be a waste of judicial resources to entertain a separate motion that re-asserts the same arguments and legal authority." (Defs.' Reply Mot. Dismiss 1.) The court commends a party's effort to be expeditious and economical, however, Defendants cannot combine a renewed motion to dismiss with a reply applicable to their original motion to dismiss. Further, the court cannot entertain a hybrid motion to dismiss that purports to address both the original and amended complaint, even if, as Defendants allege, the same legal arguments apply to both complaints. Therefore, this filing does not amount to a renewed motion to dismiss, which Defendants must file independently from their briefing on the original motion to dismiss.

